

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN JAY LACEY,

Plaintiff,

-against-

SURE SHOT BOOKS PUBLISHERS LLC,

Defendant.

24-CV-2406 (LTS)

ORDER GRANTING
RECONSIDERATION

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff was incarcerated at the Indiana State Reformatory when he filed this complaint, but he is currently incarcerated at the Plainfield Correctional Facility (“Plainfield”) in Plainfield, Indiana. He is proceeding *pro se* and *in forma pauperis* (“IFP”).

By order dated May 28, 2024, the Court dismissed Plaintiff’s complaint for lack of subject matter jurisdiction, and granted him 30 days’ leave to replead his claims in an amended complaint. The Court did not receive an amended complaint from Plaintiff, and by order dated August 22, 2024, the Court entered judgment.

The Court has now received a letter from Plaintiff seeking reconsideration of the dismissal of the action on the ground that he was transferred to Plainfield on May 8, 2024, and never received the May 28, 2024 order. (ECF 13.) The Court construes this application as a motion for reconsideration under Rule 60(b) of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court grants the motion for reconsideration and directs Plaintiff to file an amended complaint within 45 days of the date of this order.

DISCUSSION

Upon opening this new action, the Clerk’s Office docketed the court’s March 18, 2024 Standing Order, directing all self-represented litigants to inform the court of each change of

address or electronic contact information. *See In Re: Cases Filed By Pro Se Plaintiffs, This Matter Relates To: Duty of Self-Represented Parties to Keep Address Information Current*, No. 24-MC-127 (LTS) (S.D.N.Y. Mar. 18, 2024) (“ Standing Order”). That order was mailed to Plaintiff on April 1, 2024.

By order dated May 28, 2024, the Court dismissed Plaintiff’s complaint for lack of subject matter jurisdiction, and granted him 30 days’ leave to replead his claims in an amended complaint. That order was mailed to Plaintiff on May 30, 2024, and it was not returned to the court as undeliverable. Plaintiff did not file an amended complaint as directed.

He now seeks reconsideration of the dismissal of the action on the ground that he was transferred to Plainfield on May 8, 2024, and never received the May 28, 2024 order. (ECF 13.)

Under Rule 60(b) of the Federal Rules of Civil Procedure, a party may seek relief from a district court’s order or judgment for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason justifying relief.

Fed. R. Civ. P. 60(b).

Plaintiff failed to comply with the Standing Order requiring him to inform the court of any change of address. Plaintiff nevertheless has promptly sought relief from judgment. The Court concludes that there has been excusable neglect and grants Plaintiff’s motion for reconsideration.

Within 45 days from the date of this order, Plaintiff must file an amended complaint showing that the Court has subject matter jurisdiction of this matter. If Plaintiff does not file an amended complaint within the time allowed, the Court will dismiss the action. No further

extensions of time will be granted. Plaintiff is reminded that he must notify the Court in writing if his address changes, and that the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

Plaintiff's motion for reconsideration (ECF 13) is granted. The Court directs the Clerk of Court to vacate the order of dismissal and the civil judgment (ECF 11-12). Within 45 days of receiving this order, Plaintiff must file an amended complaint showing that the Court has subject matter jurisdiction of this matter. If Plaintiff does not file an amended complaint within the time allowed, the Court will dismiss the action. An Amended Complaint form is attached to this order. No further extensions of time will be granted.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: October 9, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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_____ Civ. _____ (_____)

(In the space above enter the full name(s) of the plaintiff(s).)

**AMENDED
COMPLAINT**

-against-

Jury Trial: Yes No
(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name _____
Street Address _____
County, City _____
State & Zip Code _____
Telephone Number _____

B. List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
	Telephone Number _____
Defendant No. 2	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
	Telephone Number _____
Defendant No. 3	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
	Telephone Number _____
Defendant No. 4	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
	Telephone Number _____

II. Basis for Jurisdiction:

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than \$75,000 is a diversity of citizenship case.

A. What is the basis for federal court jurisdiction? (*check all that apply*)

Federal Questions Diversity of Citizenship

B. If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? _____

C. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship _____

Defendant(s) state(s) of citizenship _____

III. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? _____

B. What date and approximate time did the events giving rise to your claim(s) occur? _____

C. Facts: _____

What
happened
to you?

Who did
what?

Was anyone
else
involved?

Who else
saw what
happened?

IV. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. _____

V. Relief:

State what you want the Court to do for you and the amount of monetary compensation, if any, you are seeking, and the basis for such compensation.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this ____ day of _____, 20____.

Signature of Plaintiff

Mailing Address

Telephone Number

Fax Number (*if you have one*)

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint. Prisoners must also provide their inmate numbers, present place of confinement, and address.

For Prisoners:

I declare under penalty of perjury that on this _____ day of _____, 20_____, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

Inmate Number